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FMCSA-1998-3706-56

Executive Order 12866
and
Congressional Review Requirements

Rulemaking Document Title: Hours of Service of Drivers; Supporting Documents

RIN: 2126-AA76

With respect to the attached rulemaking document(s):

1. **E.O. 12866:** The requirements of section 6(a)(3)(E) of E. O. 12866 have been met in accordance with the following [initial appropriate line]:

☐ The rulemaking document(s) was not reviewed by the Office of Information and Regulatory Affairs (OIRA).

☐ No substantive changes were made to the document(s) after it was submitted to OIRA.

☒ The required information is attached.

2. **Congressional Review:** The requirements of the Small Business Regulatory Enforcement Fairness Act for the submission of final rules to Congress and GAO (§ 801) have been met in accordance with the following [initial appropriate line]:

☒ This document is not a final rule.

☐ This document is not a rule under § 804.

☐ The document has been submitted to C-50 for transmission to Congress and GAO

David Miller

Signature

DAVID MILLER

Name

Project Leader

Title/Office

26 October 2004

Date


U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Memorandum

Subject: Substantive Changes to SNPRM
Hours of Service of Drivers;
Supporting Documents
RIN 2126-AA76

Date: October 26, 2004

From: David Miller 
Phase II Project Team Leader

Reply to
Attn. of: MC-PRR

To: Docket FMCSA-98-3706

This memorandum submits the substantive changes between the draft of material FMCSA provided to the Office of Management and Budget (OMB) for review and the action subsequently announced according to Executive Order 12866 section 6(a)(3)(E) "Regulatory Planning and Review."

FMCSA provided OMB a draft supplemental notice of proposed rulemaking (SNPRM) on supporting documents for driver records of duty status in the hours-of-service of requirements. The final published version corrects errors in the draft found by FMCSA.

OMB had no comments. FMCSA made the following changes:

1. On page 3 of the manuscript, added the section "Legal Basis for this Rulemaking" as required by DOT's Office of General Counsel's August 13, 2004, memo to Chief Counsels.
2. On page 23 of the manuscript, added the sentence "See the September 1, 2004, advance notice of proposed rulemaking (69 FR 53386) requesting public comments about EOBRs by November 30, 2004."
3. On page 62 of the manuscript, substituted the unfunded mandates figure of \$100 million with the figure \$120.7 million in 2003 dollars as required by DOT's Office of Policy and Office of General Counsel's April 5, 2004, memo to the Assistant Secretaries and Modal Administrators.

4. On page 74 of the manuscript, after the September 28 OMB approval, FMCSA provided OMB an additional opportunity to review an additional proposed sentence. Upon OMB's approval, added the following sentence to the proposed definition of "employee" in 49 CFR 390.5. "This definition does not affect the status of a driver as an independent contractor or employee under U.S. Department of the Treasury, Internal Revenue Service interpretations of the tax laws or in any other context beyond this subchapter."
5. Throughout the document, corrected typographical errors and made sure terms were used consistently.

David Miller